

1 **Sean C. Chapman**
2 **Law Offices of Sean C. Chapman, P.C.**
3 100 North Stone Avenue, Suite 701
4 Tucson, Arizona 85701
5 Telephone: (520) 622-0747
6 Fax: (520) 628-7861
7 Arizona State Bar No. 012088
8 Attorney for Defendant **Swartz**
9 Sean@seanchapmanlaw.com

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

| | | |
|---------------------------|---|------------------------------|
| UNITED STATES OF AMERICA, |) | CR15-1723 TUC RCC (DTF) |
| |) | |
| Plaintiff, |) | DEFENDANT’S MOTION IN |
| |) | LIMINE TO PRECLUDE |
| v. |) | DEFENDANT’S CURRENT |
| |) | EMPLOYMENT STATUS |
| Lonnie Ray Swartz, |) | |
| |) | |
| Defendant. |) | |

Defendant Lonnie Ray Swartz, by and through undersigned counsel, pursuant to Rules 104 and 401 et. seq. of the Federal Rules of Evidence, hereby moves to preclude the government from eliciting Agent Swartz’s current employment status, “leave without pay,” at the trial of this matter.

This information is irrelevant to the issues to be decided by the jury and thus is inadmissible under Fed. R. Evid. 401, 402. To the extent Agent Swartz’s current employment status may has any probative value at all, it is so minimal as to be substantially outweighed by the danger of unfair prejudice and/or confusion of the

1 issues. The risk of prejudice and jury confusion exists because the jury is likely to infer
2 that the Border Patrol's action in placing Agent Swartz on "leave without pay" status
3 means the agency reached a conclusion that he did something to violate the agency's
4 policies, including the Use of Force policy that is central to this case. Agent Swartz's
5 employment status should thus be precluded upon a balancing under Fed. R. Evid. 403.
6

7 For the foregoing reasons this Court should exercise its discretion to preclude the
8 government from eliciting Agent Swartz's current employment status with the Border
9 Patrol at the trial of this matter. *United States v. Spencer*, 1 F.3d 742, 744 (9th Cir.
10 1992) (giving district courts wide latitude to balance the prejudicial effect of proffered
11 evidence against its probative value).
12
13

14 Respectfully submitted this 1th day of February, 2018.

15 LAW OFFICES OF SEAN CHAPMAN, P.C.

16
17 BY: /S/ Sean C. Chapman
18 Sean Chapman
19 Attorney for Defendant
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

The undersigned certifies that on February 1, 2018, caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which sent notification to the following:

Wallace H. Kleindienst

Wallace.Kleindienst@usdoj.gov

Mary Sue Feldmeier

Mary.Sue.Feldmeier@usdoj.gov

US Attorney's Office – Tucson, AZ

405 W. Congress, Suite 4800

Tucson, AZ 85701-4050

Serena Lara